

ISSUE

The issue is whether OWCP properly calculated the period and amount of an underpayment of wage-loss compensation.

FACTUAL HISTORY

On September 19, 1996 appellant, then a 41-year-old criminal investigator, filed an occupational disease claim (Form CA-2) alleging that he sustained an emotional condition causally related to factors of his federal employment, including repeated, prolonged exposure to life threatening situations. He noted that he first became aware of his condition and first realized its relation to his federal employment on September 11, 1996. Appellant stopped work on June 22, 1997 and did not return.

By decision dated October 9, 1997, OWCP accepted the claim for major depressive disorder. It paid appellant wage-loss compensation on the supplemental rolls commencing October 17, 1997.

In a November 19, 1997 letter, OWCP advised appellant that it was deducting premiums for optional life insurance (OLI) from his continuing compensation payments.

By decision dated August 9, 2000, OWCP expanded its acceptance of appellant's claim to include aggravation of bruxism. By decision dated August 14, 2000, it further expanded its acceptance of the claim to include depressive psychosis and a psychogenic disorder.

On June 20, 2014 appellant began work in the private sector as a retail cashier.

By decision dated October 9, 2014, OWCP finalized a September 2, 2014 proposed reduction of appellant's compensation, pursuant to 5 U.S.C. §§ 8106 and 8115, to find that he was not totally disabled and capable of earning wages in the selected position of information clerk, Department of Labor, *Dictionary of Occupational Titles* (DOT)# 237.367-022, at the rate of \$190.00 a week. It continued to pay him wage-loss compensation on the periodic rolls based on the loss of wage-earning capacity determination.

Appellant attained 62 years of age on May 13, 2017.³

In a May 31, 2017 file memorandum, OWCP noted that appellant was enrolled in basic life insurance under Federal Employees' Group Life Insurance (FEGLI) coverage, and had elected postretirement basic life insurance (PRBLI) with no deduction. Appellant's OLI code was G0.

A May 31, 2017 periodic rolls payment plate indicates that, commencing May 28, 2017, OWCP began deducting premiums for PRBLI from appellant's continuing compensation

³ On May 18, 2017 appellant notified OWCP that he was no longer entitled to receive compensation at the augmented 75 percent rate as his divorce would be finalized, effective May 22, 2017, and he had no other eligible dependents.

payments every 28 days. It also deducted \$25.50 for basic life insurance (BLI) premiums and \$73.04 for OLI premiums.

In a February 11, 2020 letter, OWCP notified appellant that he had the option of continuing his Option B or Option C life insurance coverage beyond age 65, and provided an election form.⁴ Appellant attained 65 years of age on May 13, 2020.

In a letter dated August 14, 2020, the Office of Personnel Management (OPM) notified OWCP to begin deducting FEGLI basic life insurance premiums under code E1 at the 50 percent rate, and OLI Option C premiums under code 1X, full reduction. It noted that the commencing date for appellant's postretirement deductions was July 4, 1998, the date OWCP placed him on the periodic rolls. OPM explained that OWCP must change his life insurance code from G0 to E1, effective on the periodic rolls enrollment date of July 4, 1998. Appellant had not enrolled in Option B. He had one multiple of BLI Option C at 50 percent reduction. OPM instructed OWCP to reimburse appellant the premiums for one multiple of Option B retroactive to July 4, 1998, noting that he had one multiple of Option C until he reached age 65. It further advised OWCP to review his BLI premiums throughout the period he received FECA compensation as it appeared the premiums deducted were "too high."

On March 12, 2021 OWCP calculated that, for the period October 9, 2014 through September 12, 2020, it had deducted \$1,845.11 for BLI premiums, but should have deducted \$1,991.93, resulting in a \$146.82 under deduction. For the same period, it had deducted \$5,355.16 for OLI premiums, but should have deducted only \$403.39, creating a \$4,951.77 underpayment to appellant. OWCP also deducted \$12,629.84 for PRBLI premiums, but should have deducted only \$4,521.42, resulting in a \$8,108.42 underpayment to appellant. It added the three amounts to total a \$12,913.37 underpayment of wage-loss compensation for the period October 9, 2014 through September 12, 2020. OWCP issued appellant a supplemental payment in the amount of \$12,913.37 on March 15, 2021.

In letters dated June 2, July 9, and August 16, 2021, appellant requested that OWCP review its BLI and OLI premium deductions for the period June 2002 through June 2014. He enclosed a September 23, 1999 OWCP letter indicating that OWCP had deducted \$9.80 in OLI premiums and \$30.04 in BLI premiums from his continuing compensation payments.

An August 17, 2021 compensation payment history indicates that OWCP placed appellant on the periodic rolls effective June 21, 1998.

In an August 19, 2021 memorandum, OWCP acknowledged that it had over deducted BLI, OLI, and PRBLI premiums. Appellant's OLI code G0 should have been code E1, with BLI at 50 percent reduction and one multiple of Option C at full reduction, effective July 4, 1998. OWCP also noted that the final base salary on which FEGLI was based was \$88,262.50. It calculated that, for the period July 4, 1998 through June 28, 2014, it had over deducted \$3,100.19 in OLI premiums, \$1,607.33 in PRBLI premiums, and under deducted \$297.08 in BLI premiums. OWCP

⁴ Appellant married on June 11, 2020. OWCP paid him compensation at the 75 percent rate, commencing June 21, 2020, as he had an eligible dependent.

added the three amounts to equal \$4,410.44. On August 19, 2021 it issued appellant a supplemental payment in the amount of \$4,410.44.

In a development letter dated August 24, 2021, OWCP noted that, for the period July 4, 1998 through June 28, 2014, it had deducted \$5,468.84 in BLI premiums whereas the correct amount was \$5,765.92, a difference of \$297.08. It had also deducted \$3,480.40 in OLI premiums under code G0, whereas the proper amount was \$380.21 under code E1, a difference of \$3,100.19. OWCP also deducted \$17,848.72 in PRBLI premiums, but should have deducted \$16,241.39, a difference of \$1,607.33. It added the three amounts to equal \$4,410.44. OWCP noted that it had already made adjustments for \$13,412.97 in over deducted life insurance premiums for the period June 29, 2014 through September 12, 2020. It afforded appellant 30 days to provide “information to substantiate a revision of [the] underpayment” based on the over deductions. OWCP enclosed an August 17, 2021 compensation payment history for the period December 29, 1996 through June 28, 2014, which noted that he received compensation on the periodic rolls effective June 21, 1998.

In response, appellant submitted letters dated September 1 and 3, 2021, indicating that he disagreed with the calculation of PRBLI premiums of \$16,241.39. He contended that OWCP should have deducted only \$9,241.80 in PRBLI premiums, based on the \$43.80 premium amount specified on his January 1, 2003 OPM annuity statement (Form RI 20-25), multiplied by 211 pay periods July 4, 1998 through June 28, 2014. Appellant submitted copies of OPM annuity statements indicating that, if he were not in receipt of compensation payments from OWCP, as of July 5, 1998, OWCP would deduct \$37.96 in PRBLI premiums, and \$43.80 as of January 1, 2003.

By decision dated September 15, 2021 and reissued on September 29, 2021, OWCP denied appellant’s claim for additional compensation in addition to the \$4,410.44 paid on August 19, 2021 due to its over deduction of life insurance premiums for the period July 4, 1998 through June 28, 2014. It found that, for the period at issue, it had deducted \$5,765.92 in BLI premiums, \$297.08 more than the correct amount was of \$5,468.84. OWCP had also deducted \$3,480.40 in OLI premiums whereas the proper amount was \$380.21, a difference of \$3,100.19. It also deducted \$17,848.72 in PRBLI premiums, \$1,607.33 more than the correct amount of \$16,241.39. OWCP added the one under deduction and two over deductions to equal \$4,410.44, the amount issued to appellant on August 19, 2021. It found that the OPM annuity statements indicated that the annuity would be in effect only if he were not in receipt of FECA benefits. As appellant was paid monetary compensation benefits under FECA from July 4, 1998 through June 28, 2014, the annuity and deductions listed were not in effect.

LEGAL PRECEDENT

FECA⁵ provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.⁶

⁵ *Supra* note 1.

⁶ 5 U.S.C. § 8102(a).

Under the FEGLI Program, most civilian employees of the Federal Government are eligible to participate in basic life insurance and one or more of the options.⁷ The coverage for basic life insurance is effective unless waived,⁸ and premiums for basic and optional life insurance coverage are withheld from the employee's pay.⁹

A 1980 amendment of 5 U.S.C. § 8706(b)(2) provided that an employee receiving compensation under FECA could elect continuous withholdings from his or her compensation, so that his or her life insurance coverage could be continued without reduction. 5 C.F.R. § 870.701 (December 5, 1980) provided that an eligible employee had the option of choosing no life insurance; Option A -- basic coverage (at no additional cost) subject to continuous withholdings from compensation payments that would be reduced by two percent a month after age 65 with a maximum reduction of 75 percent; Option B -- basic coverage (at an additional premium) subject to continuous withholdings from compensation payments that would be reduced by one percent a month after age 65 with a maximum reduction of 50 percent; or Option C -- basic coverage subject to continuous withholdings from compensation payments with no reductions after age 65 (at a greater premium).¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP has established that it under deducted BLI and over deducted OLI, and PRBLI premiums from appellant's continuing compensation payments. Its March 12, 2021 calculations and August 19, 2021 memorandum demonstrate that he was underpaid \$4,410.44 for the period July 4, 1998 through June 28, 2014.

The Board finds, however, that there is insufficient evidence to establish that the over deduction of life insurance premiums did not begin until July 4, 1998. In its August 14, 2020 letter, OPM asserted that the period of over deduction began on July 4, 1998, the date OWCP placed appellant on the periodic compensation rolls. However, OWCP's August 17, 2021 compensation payment history demonstrated that OWCP placed him on the periodic rolls as of June 21, 1998. OPM also indicated that appellant's BLI premiums throughout the period he received FECA compensation were "too high."

The period and amount of the over deductions and resultant underpayment of wage-loss compensation are, therefore, in question. Accordingly, the Board finds that the case must be remanded to determine the appropriate period and amount of over deduction of life insurance

⁷ *Id.* at § 8702(a).

⁸ *Id.* at § 8702(b).

⁹ *Id.* at § 8707.

¹⁰ *J.K.*, Docket No. 20-1545 (issued July 27, 2021). *See C.A.*, Docket No. 18-1284 (issued April 15, 2019); *V.H.*, Docket No. 18-1124 (issued January 16, 2019).

premiums.¹¹ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 29, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 23, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹¹ *Cf. P.J.*, Docket No. 21-1107 (issued January 31, 2022) (where the Board remanded the claim to OWCP for clarification of the amount and period of an overpayment of compensation).